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December 6, 2002

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Re: ***Ex Parte***
CC Docket Nos. 01-338, 96-98, 98-147

Dear Ms. Dortch:

In this letter, Cbeyond Communications, LLC, Capital Telecommunications, Inc., Birch Telecom of Texas Ltd., LLP, Tex-Link Communications, Inc., Logix Communications, El Paso Networks, LLC, Allegiance Telecom of Texas, Inc., XO Communications, Inc., Xspedius Management Co. Switched Services, LLC, and NTS Communications, Inc. ("the CLEC Coalition"), apprise the Commission of recent developments concerning SBC's recently initiated policy of rejecting CLEC orders for DS-1 UNEs based on "no facilities."

The Commission has previously been apprised of the fact that SBC in SWBT territory recently initiated a new "no facilities" policy that caused a sudden spike in October of rejected orders for DS-1 loop UNEs, and that the CLEC Coalition on November 22, 2002 filed a request for emergency relief with the Texas Public Utility Commission ("TPUC") requesting that the TPUC establish temporary emergency and permanent relief from SBC's new policy. At this time, the CLEC Coalition further apprise the Commission that on December 4, 2002 SBC agreed to a temporary settlement pending consideration by the TPUC of permanent relief. In this settlement, SBC agreed to rescind in Texas its new policy and reestablish, as of December 9, 2002, its previous policy. A copy of the *Order Approving Settlement to Request for Interim Relief* of the TPUC is attached.¹ While this settlement will provide at least temporary relief from SBC's unlawful policy in Texas, SBC has reserved the option of reinstituting that policy in that state at a later time and apparently intends to vigorously defend its rescinded policy before the TPUC. Nor has SBC rescinded its new policy in other SWBT states. Accordingly,

¹ *Joint CLEC Complaint for Post-Interconnection Dispute Resolution with Southwestern Bell Telephone, L.P. and Request for Interim Ruling Regarding DS1 UNE Loop Provisioning Issues*, Order Approving Settlement to Request for Interim Relief, Docket No. 27001, Order No. 2, released December 5, 2002.

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as urged by members of the CLEC Coalition and others in this proceeding, the Commission should promptly establish rules that assure that SBC and other ILECs comply with their obligation to provide nondiscriminatory access to DS-1 loop UNEs.

Sincerely,



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DOCKET NO. 27001

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JOINT CLEC COMPLAINT FOR POST- § PUBLIC UTILITY COMMISSION
INTERCONNECTION DISPUTE §
RESOLUTION WITH SOUTHWESTERN §
BELL TELEPHONE, L.P. AND REQUEST § OF TEXAS
FOR INTERIM RULING REGARDING §
DS1 UNE LOOP PROVISIONING ISSUES §

ORDER NO. 2

ORDER APPROVING SETTLEMENT TO REQUEST FOR INTERIM RELIEF

I. BACKGROUND

A. Procedural History

On November 22, 2002, Allegiance Telecom of Texas, Inc., Birch Telecom of Texas, LTD, LLP, Capital Telecommunications, Inc., Cbeyond Communications of Texas, L.P., El Paso Networks, LLC, Logix Communications, NTS Communications, Inc., Tex-Link Communications, Inc., XO Texas, Inc., and Xspedius Management Co. Switched Services, LLC. (collectively, the CLEC Coalition,) filed a complaint for post-interconnection dispute resolution pursuant to PUC PROC. R. §22.326 and request for interim ruling pursuant to PUC PROC. R. § 22.328.¹ The complaint alleged that Southwestern Bell Telephone, L.P. (SWBT) has implemented a new policy by which it refuses to provide CLEC Coalition requests for UNEs based on “no facilities.” CLEC Coalition contended that this new policy violates the nondiscrimination requirements in federal and Texas law, violates the Interconnection Agreements between SWBT and each complainant CLEC, and violates the commitments SWBT

¹ Docket No. 27001, Joint Complaint and Request for Interim Ruling for Post-Interconnection Agreement Dispute Resolution with SWBT Regarding DS1 UNE Loop Provisioning Issues. November 22, 2002.

made to obtain authority to provide in-region inter-LATA services. To remedy the harm these violations have caused, CLEC Coalition requested reimbursement of the sums they paid associated with obtaining special access circuits from SWBT, when SWBT claimed no facilities were available to fulfill DS1 UNE orders, and requested that SWBT be required to convert special access orders to DS1 UNE loops immediately and/or process the DS1 UNE loop orders that were refused. The CLEC Coalition asked that the Commission issue an interim ruling prohibiting SWBT from implementing its new policy and requiring that it continue providing DS1 UNE loops under the same process SWBT used prior to October 2002.

SWBT did not file pleadings in this matter. By agreement of all parties, the requirement of PUC PROC. R. §22.328(d) that a hearing be held within three business days of the filing of a complaint was waived because of the Thanksgiving Holidays.

A hearing for Interim Ruling was convened on December 4, 2002. At that time the parties read the terms of a Settlement Agreement into the record. This Agreement settles all contested issues for the purposes of the hearing on the request for Interim Ruling regarding provisioning DS1 UNE Loops. However, the parties wish to pursue final resolution of this issue in a Hearing of the Merits. The parties are developing a proposed schedule for the Hearing on the Merits.

B. The Interim Relief Originally Sought

CLEC Coalition had originally asked that the Arbitrators order the following interim relief:²

- Order SWBT to reinstate the DS1 UNE loop conditioning and provisioning procedures that were in practice prior to its recent institution of the “UNE DS1 Interim Procedures”

² *Id.* at 37-38.

reflected in SWBT's Construction and Engineering Methods and Procedures, or any other practices similar to such procedures;

- Order SWBT to treat "no facilities" determinations for UNE DS1 loops the same way it would if the order were for a SWBT retail DS1-level service or for SWBT's special access service;
- Order SWBT to reimburse CLEC Coalition for all additional costs associated with ordering and using the special access circuit when a CLEC had ordered SWBT special access service due to the imposition of the new "no facilities" procedures;
- Order SWBT to permit the CLEC Coalition to re-submit any order for DS1 UNE loop that was returned due to the new "no facilities" procedures and order SWBT to provision the orders on an expedited basis;
- Order SWBT to immediately convert all circuits ordered as special access due to the new "no facilities" procedures to DS1 UNE loops at no additional cost.

II. SETTLEMENT AGREEMENT

The parties agreed to the following terms of a Settlement Agreement that settles all issues for the purposes of the hearing for Interim Ruling:³

1. The complainants will not seek as interim relief a refund of any monies paid for nonrecurring or recurring charges for special access services ordered and installed through December 1, 2002, due to the alleged imposition of the no-facilities procedures addressed in the complaint;
2. The complainants will pay all amounts billed for nonrecurring and recurring charges for special access services installed and invoiced to complainants on or before December 1, 2002. After December 1, Southwestern Bell will charge the CLECs DS1 UNE loop rates for these circuits;

³ Tr. at 5-8. November 4, 2002.

3. Effective immediately, Southwestern Bell will reinstate the DS1 UNE loop conditioning and provisioning procedures that were in practice prior to the institution of the "UNE DS1 interim procedures" reflected in Southwestern Bell's construction and engineering methods and procedures. Southwestern Bell will implement this condition and communicate it to Southwestern Bell personnel by on or about December 9, 2002. Southwestern Bell does not waive any position or argument concerning the institution of the UNE DS1 interim procedures or whether such procedures constitute a new or revised policy. Southwestern Bell will provide to complainants a copy of the notice sent to Southwestern Bell personnel informing them that the UNE DS1 interim procedures are rescinded pursuant to this settlement;

4. Southwestern Bell will convert the special access circuits referred to in Item 1 above. The complainants agree to provide to Southwestern Bell a document that identifies special access circuits for conversion. All special access circuits converted to UNE shall be converted on a "switch as is" basis. All orders would follow the existing special access to UNE conversion process currently in place. The same facilities would be used on these conversions to avoid the need for hotcuts, which should avoid service disruption. It is the parties' expectation that no service disruptions will occur. No additional charges will apply to these conversions;

5. On the pending special access ASRs (i.e., ones that have not been installed and billed as of December 1, 2002), Southwestern Bell will finish provisioning those circuits as special access, then convert to UNE. The appropriate UNE installation charges will apply. CLECs agree to provide Southwestern Bell a list of all ASRs pending as of December 4, 2002;

6. One CLEC, NTS, also ordered DS0 UNE loops (one order for 13 DS0 loops, another order for 18 DS0 loops). NTS will pay what it has been billed for these DS0s as of December 1, but each of its DS0 orders should be converted to DS1 orders (a total of two DS1 UNE loops). Southwestern Bell will cooperate with NTS to transition its DS0 circuits to DS1 UNEs based on the principles in the settlement agreement, particularly that there should be no additional charges for transitioning these DS0 loops to DS1 UNE loops;

7. Both parties agree that all circuits provisioned under the settlement agreement will be subject to a true-up upon final resolution of this case;
8. Parties will cooperate in setting this matter for an accelerated procedural schedule;
9. The parties agree that the terms of this settlement agreement will be read into the record of this proceeding on December 4, 2002. In agreeing to these terms, the parties do not waive any of their positions and/or arguments on the merits. In addition, this agreement will not have precedential effect on any future matters before federal or any state commissions.

III. CONCLUSION

Based on the parties' settlement which was read into the record of this proceeding, the Arbitrators order implementation of the settlement terms detailed in Section II of this Order. The Arbitrators further order that the parties consult and submit a joint proposed procedural schedule, including several proposals for the hearing on the merits for this docket no later than December 13, 2002.

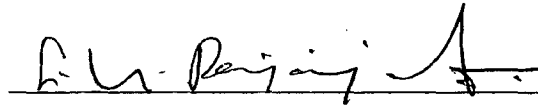
Nothing in the disposition of the Request for Interim Relief will have precedential effect on the Hearing on the Merits on this docket.

SIGNED AT AUSTIN, TEXAS the 5th day of December, 2002.

PUBLIC UTILITY COMMISSION OF TEXAS



**MICHAEL FIELD
ARBITRATOR**



**ELANGO RAJAGOPAL
ARBITRATOR**